These notes refer to the Finance Act 2010 (c.13) which received Royal Assent on 8 April 2010

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 48: Extension of Special Annual Allowance Charge

Summary

1. Section 48 amends Schedule 35 to the Finance Act (FA) 2009 to lower the income threshold at which an individual is a high income individual for the purposes of determining whether the special annual allowance charge is applicable. The income threshold is lowered from £150,000 to £130,000 on and after 9 December 2009.

Details of the Section

2. Subsection (2) amends paragraph 1(2) of Schedule 35 to reduce the relevant income threshold at which an individual becomes a high income individual from £150,000 to £130,000 and inserts a reference to new paragraph 16A.

3. Subsection (3) amends paragraph 2(1) and (2) to substitute a threshold of £130,000 rather than £150,000 when calculating an individual's relevant income. It also amends the anti-avoidance rule at paragraph 2(3) so that it applies if there is a scheme to reduce the individual's relevant income below £130,000.

4. Subsection (4) inserts a new sub-paragraph 5A in Schedule 35. New sub-paragraph 5A provides that only employment income the individual has agreed to give up under a salary sacrifice scheme made on or after 9 December 2009 is taken into account when determining if an individual has relevant income of £130,000 or more.

5. Subsection (5) corrects an omission in Schedule 35 by inserting 2009 after 22 April.

6. Subsection (6) inserts a new paragraph 16A in Schedule 35. New paragraph 16A only applies to individuals with relevant income below £150,000 in 2009-10. Paragraph 16 of Schedule 35 provides how to determine how much of the pension input amounts for that year are pre-22 April 2009 input amounts and do not therefore give rise to the special annual allowance charge. New paragraph 16A ensures that the same protection from the special annual allowance charge is provided for those with an income of less than £150,000 during 2009-10 in respect of pre-9 December 2009 pension input amounts.

7. New paragraph 16A(6) provides that an individual whose relevant income in 2009-10 is less than £150,000 is nonetheless a high-income individual for the purposes of the special annual allowance charge in that tax year if the individual's relevant income in either of the two preceding tax years was £130,000 or more.

8. New paragraph 16A(7) provides an anti-avoidance rule so that if there is a scheme the purpose of which is to reduce the individual's relevant income for 2009-10 so that it is less than £150,000 in order to prevent the individual from being subject to the special annual allowance charge, the individual shall be treated as an individual with a relevant income of £150,000 who is liable to the special annual allowance charge.

9. Subsection (7) provides that the amendments made by the section have effect for 2009-10 and subsequent years. This is subject to paragraph 21(2) of Schedule 35 to FA 2009, which provides a power for HM Treasury to make regulations switching off the special annual allowance charge from the beginning of a particular tax year.

Background Note

10. At Budget 2009, the Chancellor announced changes to the tax relief available on pension savings for individuals whose income is £150,000 or higher.

11. The Government intends to restrict the availability of tax relief to basic rate on contributions to registered pension schemes for individuals whose income is £150,000 or higher with effect from 6 April 2011.

12. In anticipation of that new restriction, Schedule 35 to FA 2009 introduced new rules to apply from 22 April 2009 to restrict higher rate tax relief on pension contributions for individuals. This introduced the special annual allowance charge, an income tax charge at 20 per cent for certain individuals on certain pension contributions and benefits accrued.

13. These restrictions apply to people:

- whose income is £150,000 or higher;
- who change their normal ongoing regular pension savings; and
- whose total pension savings exceed £20,000 (or the lower of £30,000 and average contributions over the past three years if contributions are less regular than quarterly).

These restrictions remove the advantage to those individuals of increasing their pension contributions in excess of their normal pattern.

14. At the 2009 Pre-Budget Report, the Government announced a change in the income definition for the 2011 restriction which includes the pension benefit provided by an employer. This is set at £150,000 and is subject to a £130,000 floor which excludes employer contributions.

15. The change introduced by the section prevents individuals who may be brought into the restriction as a result of the change in the income definition from making substantial additional pension contributions in order to take advantage of higher rate pensions tax relief while this level of relief is still available to them.